

DEBTOR.

MOTION FOR PRELIMINARY
INJUNCTION
Case No. 13-31830
(Chapter 13)

6. Creditor, Branch Banking and Trust, has filed a “Motion to set aside foreclosure sale and report of foreclosure sale and to allow a new foreclosure sale” in the

Mecklenburg County General Court of Justice Before the Clerk of Superior Court

requesting permission to conduct a new Foreclosure sale that may occur before this Court has the opportunity to conduct a hearing on a pending motion.

7. In the absence of a Preliminary Injunction irreparable harm will occur.

8. Creditors "Motion to set aside foreclosure sale and report of foreclosure sale and to allow a new foreclosure sale" is attached.

WHEREFORE, Debtor respectfully requests that the Court issue an immediate Preliminary Injunction preventing any collection actions by any entities until after the Court rules on any pending Motions and in addition that the Court conduct an expedited hearing in this matter.

Dated: 10/07/15

/s/ N. V. Mackey
Nikita V Mackey
Debtor
11142 Hunters Trace
Charlotte, North Carolina 28262
nmackey@macklaw.net
(704) 412-3030 phone

NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK
13 SP 3598

In the Matter of the Foreclosure of a Deed of Trust
executed by Nikita V. Mackey (PRESENT RECORD
OWNER(S): Tyral Victoria Gilreath) in the original
amount of \$87,000.00 dated January 13, 1997 recorded
in Book 8899, Page 450, and Re-recorded in Book 11092,
Page 516, Mecklenburg County Registry
Substitute Trustee Services, Inc., Substitute Trustee

**MOTION TO SET ASIDE FORECLOSURE SALE AND
REPORT OF FORECLOSURE SALE AND TO ALLOW A
NEW FORECLOSURE SALE**

NOW COMES, Substitute Trustee Services, Inc., Substitute Trustee, and moves this Court for an Order setting aside the Foreclosure Sale and filed Report of Foreclosure Sale, and allowing a new foreclosure sale in this matter, and in support thereof shows the Court that:

1. A foreclosure sale was duly conducted in this matter on August 15, 2013, wherein Branch Banking and Trust Company, the noteholder, was the last and highest bidder.
2. Unknown to the Substitute Trustee, the Mortgagor(s), Nikita V. Mackey filed a Chapter 13 Bankruptcy on August 21, 2013. The Substitute Trustee was advised of the bankruptcy prior to filing the Final Report and Account or recording the Trustee's Deed.
3. As a matter of law, the Substitute Trustee was stayed from taking any further action in the foreclosure and consequently the Report of Foreclosure Sale is void or voidable.
4. On September 18, 2015, an Order was entered in the 13-31830 Bankruptcy Court Western District of North Carolina granting the noteholder relief from the automatic stay, as evidenced by attached copy of said Order.

WHEREFORE, Movant prays the Court that an Order be entered setting aside the foreclosure sale conducted on August 15, 2013, and Report of Foreclosure Sale filed on August 15, 2013, and that the Substitute Trustee be permitted to conduct a new foreclosure sale in accordance with applicable law.

This 29th day of September, 2015.

SUBSTITUTE TRUSTEE SERVICES, INC.
SUBSTITUTE TRUSTEE

BY: 

Attorney at Law
Hutchens Law Firm
Attorneys for Substitute Trustee Services, Inc.
4317 Ramsey Street
Fayetteville, NC 28311
Telephone: (910) 864-3068

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. THE PURPOSE OF THIS COMMUNICATION IS TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, **except as stated below in the instance of bankruptcy protection.**

IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

Firm Case No: 1113254 (FC.FAY)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Hearing was served on the following individuals by United States Mail, first class, postage paid, and addressed as follows or by electronic case filing:

Bankruptcy Administrator

Via Electronic Case Filing

Warren L. Tadlock
Chapter 13 Trustee
5970 Fairview Rd., Ste 650
Charlotte, NC 28210

Via Electronic Case Filing

Hutchins Law Firm
S. Troy Staley
4317 Ramsey Street
Fayetteville, NC 28302

Via Electronic Case Filing

This 7th day of October, 2015.

By:

s/Nikita V Mackey
Nikita V. Mackey
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Charlotte, North Carolina
28262
704-412-3030 phone
704-412-2929 fax
nmackey@macklaw.net